National Anti-Corruption Commission

Contracted service providers, consultants, grant recipients and the NACC

This fact sheet explains how service providers, consultants and grant recipients contracted by Commonwealth Government agencies are public officials and within the jurisdiction of the National Anti-Corruption Commission.

Who is a public official?

Public officials are defined in the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act) as **staff members of a Commonwealth agency**, staff members of the National Anti-Corruption Commission (the Commission) and parliamentarians.

A Commonwealth agency means a Commonwealth Government department or agency. It does not include State, Territory or local governments (councils) or their departments or agencies.

Where a Commonwealth agency is responsible for administering a contract to deliver goods and services to or on behalf of the Commonwealth (under a Commonwealth contract), the definition of a **staff member of a Commonwealth agency** includes an individual who is:

a. a party to the contract, or a subcontractor, who is responsible for the provision of goods or services under the contract (contracted service provider) including people who provide services under labour-hire contracts, such as ICT contractors, as well as consultants and advisers, for example as lawyers, accountants or consultants from private firms
b. an officer or employee of a contracted service provider, who provides goods and services for the purposes (whether direct or indirect) of the contract.

This means individuals who are contracted service providers (including subcontractors), and officers or employees of contracted service providers, who provide goods or services under the contract, are **public officials** and are within the jurisdiction of the Commission.

The following further explains the Commission's jurisdiction with respect to contracted service providers.

Commonwealth contract

A Commonwealth contract exists where the Commonwealth or a Commonwealth agency is a party to a contract. Goods or services (or both) must be being provided **to** the Commonwealth or the agency, or the goods or services are being provided **in connection with activities** of the Commonwealth or the agency.

Examples of Commonwealth contracts include a contract to:

- provide IT services to a Commonwealth agency
- operate a Commonwealth facility on behalf of the Commonwealth (such as an immigration detention centre)
- provide a service to the Commonwealth, such as legal services
- operate a call centre on behalf of a Commonwealth agency.

Contracted service provider

A contracted service provider is a person who is a party to a Commonwealth contract or is a party to a subcontract with a contracted service provider and is responsible for the provision of goods or services under the contract, either directly or indirectly.

Examples of contracted service providers include:

- XYZ Airlines has a contract with the Commonwealth to provide air travel to Commonwealth employees throughout Australia – XYZ **is a contracted service provider**.
- If XYZ subcontracts the provision of air travel in Tasmania to ABC Airways – ABC Airways **is a contracted service provider**.
- If XYZ subcontracts Baghandlers Pty Ltd to provide baggage handling services as part of the provision of travel services, Baghandlers **is a contracted service provider**.
- However, if XYZ contracts Collar Clothing Pty Ltd to provide uniforms for all its own employees, Collar Clothing **is not a contracted service provider** because its contract is not for the purposes of the Commonwealth contract.

Staff member of a Commonwealth agency

For the purposes of the NACC Act, an individual who is a contracted service provider is a staff member of the Commonwealth agency responsible for administering the Commonwealth contract.

An officer or employee of a contracted service provider who provides goods or services for the purposes of the contract is also a staff member of the agency.

Types of corrupt conduct

Under the NACC Act, there are 4 types of corrupt conduct. A person engages in corrupt conduct if they:

1. do something to adversely affect a public official's honest or impartial exercise of powers or performance of official duties. Any person can engage in this type of corrupt conduct, even if they are not a public official themselves
2. are a public official and breach public trust
3. are a public official and abuse their office as a public official
4. are a public official or former public official and misuse information they gained in their capacity as a public official.

A person also engages in corrupt conduct if they try or plan or conspire to do any of the above. This applies regardless of when the conduct took place – including before the NACC Act commenced.

The NACC Act does not legislate new standards of behaviour. The conduct it characterises as corrupt has always been improper.

Mistakes, negligence and maladministration are not in themselves corrupt conduct. Generally acting in bad faith and/or for a private purpose (as distinct from a public purpose) is necessary for conduct to be corrupt.

Breach of public trust

The key feature of breach of public trust is the exercise of a public power, or the performance of a public function, for an improper purpose. An improper purpose is one foreign to that for which the power was conferred on the public official. This could include the use of official powers to advance a private interest or applying public resources for a purpose for which they were not appropriated.

A public official can breach public trust even if they do not gain any advantage for themselves or someone else.

Abuse of office

A public official abuses their office when they intentionally engage in improper acts or omissions in their official capacity. This includes using opportunities and resources that accompany that office for a private purpose – typically to gain a benefit for themselves or another person (including their associates), or to cause a detriment to another person.

An abuse of office can be committed through the exercise of influence arising from the person's public office, or the misuse of information obtained in their capacity as a public official.

Misuse of official information

A current or former public official misuses official information if they use information they have because of their position for purposes other than those for which they had access to it.

Causing dishonesty or partiality in performance of public functions

Typical examples of causing a public official to act other than honestly and impartially in performing their public duties involve bribes or threats to public officials. However, this also includes public officials themselves acting dishonestly in performing their public functions.

Serious or systemic corrupt conduct

The Commission's jurisdiction is primarily concerned with serious or systemic corrupt conduct. See What can the NACC investigate? | National Anti-Corruption Commission (NACC).

To be **serious**, the corrupt conduct must be significant, more than negligible or trivial, but it does not need to be severe or grave.

To be **systemic**, the corrupt conduct must be more than an isolated case, involve a pattern of behaviour or affect or be embedded in a system. It can occur in one or multiple agencies, and can involve one or multiple individuals, but does not need to be coordinated.

Examples of staff members of a Commonwealth agency include:

- Australia Post contracts the delivery of mail in Tasmania to Devil Couriers, which then subcontracts the delivery of mail to the West Coast to Jane Citizen, an individual, then Jane Citizen would be a staff member of Australia Post.
- Devil Couriers subcontracts to Tiger Couriers, then only those officers or employees of Tiger Couriers who actually provide the subcontracted courier services are deemed to be staff members of Australia Post.

Commonwealth grant recipients

In many cases, recipients of Commonwealth grants will be contracted service providers, if the funding arrangement includes the provision of goods or services in connection with the activities of the Commonwealth or a Commonwealth agency.

A Commonwealth grant recipient and their officers and employees can also come within the jurisdiction of the Commission if they engage in conduct that adversely affects the honesty and impartiality of a public official's exercise and performance of their powers, functions and duties (see section 8(1)(a) of the NACC Act).

Any referrals to the Commission regarding the conduct of Commonwealth grant recipients require assessment on a case-by-case basis to determine if they are within the Commission's jurisdiction. Section 38(2) of the NACC Act states that a person making a mandatory referral must include with the referral all information relevant to the issue that is in the person's possession or control at the time.

Referrals to the Commission

Mandatory referrals

Under section 33 of the NACC Act, agency heads have mandatory referral obligations and must refer a corruption issue to the Commission as soon as reasonably practicable after they become aware of it (including through external or third-party reporting) if:

- it concerns the conduct of a current or former officer or employee and
- the agency head suspects that the issue could involve corrupt conduct that is serious or systemic.

If the agency head becomes aware of any further relevant information, they must provide it to the Commission as soon as reasonably practicable.

Voluntary referrals

Any person, including an officer or employee of a contracted service provider, a Commonwealth grant recipient, an Australian Public Service employee, or a member of the public, can make a voluntary referral, and all referrals are treated confidentially. Referrals can be made anonymously; however, anonymity prevents follow-up communication.

See How to make a report | National Anti-Corruption Commission (NACC).

Protections for people who make referrals

Anyone who refers a corruption issue to the Commission is protected under the NACC Act from civil, criminal or administrative liability, including disciplinary action. No contractual or other right or remedy can be enforced against them.[1] It is a criminal offence for any person to take reprisal action against a person for making a disclosure to the Commission.[2]

However, this does not affect the civil, criminal or administrative liability of an individual for knowingly making a statement to the Commission that is false or misleading.[3]

See Protections for referrers, whistleblowers and witnesses | National Anti-Corruption Commission (NACC).

In some cases, protections may also be available under the whistleblower protection regime in the *Corporations Act 2001* (Cth).

1 NACC Act, s 24.

2 NACC Act, s 30.

3 NACC Act, s 25.

Contact us

Please use our webform to make a report of corrupt conduct.

If in doubt about whether to refer a matter to the Commission, contact us.

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